HSBC International Trustee Ltd & Anor v Tan Boon Thien (in his personal capacity and as beneficiary to the estate of Tan Kim Choo, deceased) and another application

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NOS WA-24–25–04 OF 2021 AND WA-24–26–04 OF 2021
NOORIN BADARUDDIN J
8 DECEMBER 2022

Civil Procedure — Judgment — Reciprocal enforcement of judgments — Whether High Court in Kuala Lumpur acted properly in registering final orders made by Singapore High Court as a judgment of the High Court of Malaya pursuant to ss 3 and 4 of Reciprocal Enforcement of Judgments Act 1958 ('the REJA') — Whether defendant failed to show that any of the grounds under s 5(1) of the REJA applied to warrant the setting aside of the registration

In 2002, the late Tan Kim Choo ('TKC') appointed the first plaintiff, which was incorporated in the British Virgin Islands, to be the trustee of a scholarship trust ('the TKC trust') under which his children and grandchildren were the beneficiaries. Matters concerning the trust were to be governed by the laws of the Cayman Islands which venue was also to be the forum for administration of the trust. The second plaintiff was the first plaintiff's wholly-owned subsidiary incorporated in Singapore and essentially carried on the same business as the first plaintiff. Following TKC's death in 2018, a dispute arose over which one of his two wills was valid. Under the first will, the named executor and the beneficiaries were, respectively, TKC's family lawyer and his three daughters. Under the second will, the executor was the defendant herein, Tan Boon Thien ('TBT') — who was also TKC's son — and the beneficiaries were TBT and his wife. Whilst the dispute over the two wills was pending in the High Court in Kuala Lumpur, TBT, acting both in his personal capacity and as executor of TKC's estate, sued the plaintiffs in the Singapore High Court for various reliefs. On the plaintiffs' application, the court stayed the proceedings in Singapore on the ground that the TKC trust was governed by Cayman law and the trust provided that the Cayman courts had exclusive jurisdiction over any dispute involving the trust. In granting the stay, the Singapore court ordered TBT to pay the plaintiffs costs and disbursements (which had been ascertained) in respect of two interlocutory applications ('the Singapore orders'). TBT failed to comply with the Singapore orders. The plaintiffs then successfully applied to register the Singapore orders as judgments of the High Court of Malaya ('the registration orders') pursuant to the Reciprocal Enforcement of Judgments Act 1958 ('the REJA') for the purposes of execution. TBT filed the instant two originating summonses ('OS') to set aside the registration orders on the

grounds that: (a) the Singapore court had taken into account or had considered matters it did not have the jurisdiction to decide upon; (b) the granting of the registration orders was premature since the High Court in Kuala Lumpur had yet to determine whether TBT was a valid executor of TKC's estate and therefore he would be prejudiced if the court decided that he was not the valid executor; and (c) the registration orders were contrary to public policy in Malaysia. The plaintiffs, on the other hand, urged the court to dismiss both the OS because TBT had failed to show that any of the grounds specified under s 5(1) of the REJA applied to set aside the registration orders.

Held, dismissing both the OS:

(1) The Singapore orders were valid and enforceable by way of execution in Singapore. The orders were not appealed against nor was any stay of execution of them granted by the Singapore Court. The Singapore orders were therefore final and conclusive as between the parties. TBT had failed to pay the costs and disbursements that he was ordered to pay under the orders. The Singapore High Court was a superior court of a reciprocating country under the First Schedule of REJA. The plaintiffs, therefore, had met all the requirements under ss 3 and 4 of REJA to register the Singapore orders as judgments of this court. The registration orders were accordingly in order (see paras 26 & 28–29).

(2) The grounds for setting aside a registered judgment were limited to those set out under s 5(1) of REJA. TBT had failed to show that any of those grounds applied to warrant the setting aside of the registration orders (see paras 30 & 47).

(3) TBT's contention that the Singapore High Court had taken into account and/or had considered matters which it did not have the jurisdiction to decide was one that went to the merits of the case. Any challenge to the merits of the case should have been taken up before the Singapore High Court itself or in an appeal or in an application to set aside the Singapore orders. Before this court, what was being challenged was only the registration of the Singapore orders and not the merits or propriety of those orders. This ground of objection therefore failed (see para 34).

(4) The contention that the registration orders were premature and could prejudice TBT if the High Court in Kuala Lumpur decided that he was not a valid executor of TKC's estate was erroneous and misconceived and was not a ground for setting aside under s 5(1) of REJA. The court could not act upon hypothesis and conjecture, which was what TBT was relying upon to support his applications. The validity or otherwise of TBT's appointment as executor of TKC's estate was irrelevant to the Singapore orders because the proceedings in Singapore were stayed not because of or pending the decision of the Kuala Lumpur High Court on the probate challenge suit but because the Singapore Court decided that

A the Cayman Islands was the more appropriate venue to resolve the dispute between the parties. In any case, TBT in the Singapore Court had acted both in his personal capacity as well as executor of TKC's estate. The Singapore orders relating to costs and disbursements were made against him in both those capacities and were therefore enforceable against him in either capacity, jointly and severally (see paras 35, 37–38, 40 & 42).

(5) The non-recognition of the Singapore orders would violate the principle of international comity and substantial reciprocity as statutorily provided under REJA. The orders for payment of costs and disbursements were final and enforceable against TBT by way of execution in Singapore, and therefore in Malaysia, as provided under REJA. TBT failed to demonstrate any concrete relationship between the Malaysian and Singapore proceedings and how the enforcement of a final and conclusive judgment in respect of the costs and disbursements would be contrary to any public good and/or public interest. TBT's reliance on public policy as a ground to set aside the registration orders was erroneous and could not be sustained (see paras 45–46).

[Bahasa Malaysia summary

Pada tahun 2002, mendiang Tan Kim Choo ('TKC') melantik plaintif pertama, yang telah diperbadankan di British Virgin Islands, untuk menjadi pemegang amanah biasiswa ('amanah TKC') di mana anak dan cucunya adalah benefisiari. Perkara-perkara mengenai amanah tersebut hendaklah dikawal oleh undang-undang Kepulauan Cayman yang mana tempat tersebut juga menjadi forum untuk pentadbiran amanah. Plaintif kedua adalah anak syarikat milik penuh plaintif pertama yang diperbadankan di Singapura dan pada asasnya menjalankan perniagaan yang sama seperti plaintif pertama. Berikutan kematian TKC pada 2018, timbul pertikaian mengenai mana satu daripada dua wasiatnya sah. Di bawah wasiat pertama, wasi yang dinamakan dan benefisiari adalah, masing-masing, peguam keluarga TKC dan tiga anak perempuannya. Di bawah wasiat kedua, wasi adalah defendan di sini, Tan Boon Thien ('TBT') — yang juga anak TKC — dan benefisiari adalah TBT dan isterinya. Sementara pertikaian mengenai dua wasiat tersebut belum selesai di Mahkamah Tinggi di Kuala Lumpur, TBT, bertindak atas kapasiti peribadinya dan sebagai wasi harta pusaka TKC, menyaman plaintif di Mahkamah Tinggi Singapura untuk pelbagai relif. Atas permohonan plaintif, mahkamah menggantung prosiding di Singapura atas alasan bahawa amanah TKC ditadbir oleh undang-undang Cayman dan amanah memperuntukkan bahawa mahkamah Cayman mempunyai bidang kuasa eksklusif ke atas sebarang pertikaian yang melibatkan amanah. Dalam membenarkan penggantungan, Mahkamah Singapura memerintahkan TBT membayar kos dan perbelanjaan plaintif (yang telah dikenal pasti) berkenaan dengan dua permohonan interlokutori ('perintah Singapura'). TBT gagal mematuhi

perintah Singapura. Plaintif kemudiannya berjaya memohon untuk mendaftarkan perintah Singapura sebagai penghakiman Mahkamah Tinggi Malaya ('perintah pendaftaran') menurut Akta Penguatkuasaan Penghakiman Bersilang 1958 ('APPB') untuk tujuan pelaksanaan. TBT memfailkan dua saman pemula ('SP') semasa untuk mengetepikan perintah pendaftaran atas alasan bahawa: (a) Mahkamah Singapura telah mengambil kira atau telah mempertimbangkan perkara yang ia tidak mempunyai bidang kuasa untuk memutuskan; (b) pemberian perintah pendaftaran adalah prematang kerana Mahkamah Tinggi di Kuala Lumpur masih belum menentukan sama ada TBT adalah wasi yang sah bagi harta pusaka TKC dan oleh itu beliau akan diprejudiskan sekiranya mahkamah memutuskan bahawa beliau bukan wasi yang sah; dan (c) perintah pendaftaran adalah bertentangan dengan dasar awam di Malaysia. Plaintif, sebaliknya, menggesa mahkamah untuk menolak kedua-dua SP kerana TBT gagal menunjukkan bahawa mana-mana alasan yang dinyatakan di bawah s 5(1) APPB diguna pakai untuk mengetepikan perintah pendaftaran.

Diputuskan, menolak kedua-dua SP:

(1) Perintah Singapura adalah sah dan boleh dikuatkuasakan dengan cara pelaksanaan di Singapura. Perintah-perintah itu tidak dirayu dan tiada sebarang penggantungan pelaksanaannya diberikan oleh Mahkamah Singapura. Oleh itu, perintah Singapura adalah akhir dan muktamad di antara kedua-dua pihak. TBT telah gagal membayar kos dan perbelanjaan yang diarahkan untuk dibayar di bawah perintah. Mahkamah Tinggi Singapura adalah mahkamah atasan negara silang di bawah Jadual Pertama APPB. Oleh itu, plaintif telah memenuhi semua keperluan di bawah ss 3 dan 4 APPB untuk mendaftarkan perintah Singapura sebagai penghakiman mahkamah ini. Perintah pendaftaran adalah teratur (lihat perenggan 26 & 28–29).

(2) Alasan untuk mengetepikan penghakiman berdaftar adalah terhad kepada yang dinyatakan di bawah s 5(1) APPB. TBT telah gagal untuk menunjukkan bahawa mana-mana alasan tersebut digunakan untuk menjamin pengetepian perintah pendaftaran (lihat perenggan 30 & 47).

(3) Pendapat TBT bahawa Mahkamah Tinggi Singapura telah mengambil kira dan/atau telah mempertimbangkan perkara yang tidak mempunyai bidang kuasa untuk memutuskan adalah satu yang merujuk kepada merit kes tersebut. Sebarang cabaran terhadap merit kes tersebut sepatutnya dibawa ke Mahkamah Tinggi Singapura sendiri atau dalam rayuan atau dalam permohonan untuk mengetepikan perintah Singapura. Di hadapan mahkamah ini, apa yang dicabar hanyalah pendaftaran perintah Singapura dan bukannya merit atau kewajaran perintah tersebut. Oleh itu alasan bantahan gagal (lihat perenggan 34).

(4) Pendapat bahawa perintah pendaftaran adalah prematang dan boleh

menjejaskan TBT jika Mahkamah Tinggi di Kuala Lumpur memutuskan bahawa beliau bukan wasi yang sah bagi harta pusaka TKC adalah khilaf dan salah arah dan bukan alasan untuk pengetepian di bawah s 5(1) APPB. Mahkamah tidak boleh bertindak atas hipotesis dan andaian, yang mana TBT bergantung harap untuk menyokong permohonannya. Kesahihan atau sebaliknya pelantikan TBT sebagai wasi harta pusaka TKC adalah tidak relevan dengan perintah Singapura kerana prosiding di Singapura digantung bukan kerana atau menunggu keputusan Mahkamah Tinggi Kuala Lumpur mengenai saman cabaran probet tetapi kerana Mahkamah Singapura memutuskan bahawa Kepulauan Cayman adalah tempat yang lebih sesuai untuk menyelesaikan pertikaian antara pihak. Walau apa pun, TBT di Mahkamah Singapura telah bertindak atas kapasiti peribadinya dan juga pelaksana harta pusaka TKC. perintah Singapura yang berkaitan dengan kos dan perbelanjaan telah dibuat terhadapnya dalam kedua-dua kapasiti tersebut dan oleh itu boleh dikuatkuasakan terhadapnya sama ada dalam kapasiti, secara bersama dan berasingan (lihat perenggan 35, 37–38, 40 & 42).

(5) Ketiadaan pengiktirafan perintah Singapura akan melanggar prinsip komitmen antarabangsa dan bersilang yang besar seperti yang diperuntukkan mengikut undang-undang di bawah APPB. Perintah untuk pembayaran kos dan pengeluaran adalah muktamad dan boleh dikuatkuasakan terhadap TBT dengan cara pelaksanaan di Singapura, dan oleh itu di Malaysia, seperti yang diperuntukkan di bawah APPB. TBT gagal menunjukkan sebarang hubungan konkrit antara prosiding Malaysia dan Singapura dan bagaimana penguatkuasaan penghakiman muktamad dan konklusif berkenaan dengan kos dan pengeluaran akan bertentangan dengan mana-mana kebaikan awam dan/atau kepentingan awam. Kebergantungan TBT pada dasar awam sebagai alasan untuk mengetepikan perintah pendaftaran adalah salah dan tidak dapat dipertahankan (lihat perenggan 45–46).]

Cases referred to

Malayan Banking Berhad v Ng Man Heng [2005] 1 MLJ 470, HC (refd)
Mann Holdings Pte Ltd & Anor v Ung Yoke Hong [2019] MLJU 101, CA (refd)
Mann Holdings Pte Ltd & Anor v Ung Yoke Hong [2019] 8 MLJ 186, HC (refd)
PT Sandipala Arthaputra v Muehlbauer Technologies Sdn Bhd [2021] MLJU 1063, HC (refd)
Rotary Engineering Ltd and Others v Kioumji & Eslim Law Firm and Another and Another Appeal [2017] 1 SLR 907, CA (refd)

Legislation referred to

Evidence Act 1950 ss 45(1), 51
Reciprocal Enforcement of Judgments Act 1958 ss 3, 4, 4(5), 5(1), Part II
Rules of Court 2021 [SG] O 56 r 3(1), O 57 r 4

Supreme Court of Judicature Act 1969 [SG] s 34, 41, Fifth Schedule

Abd Azim bin Abd Razak (with Yap Mei Yan) (Rahmat Lim & Partners) for the plaintiffs.
Naielah bt Julius (with Chong Ee Wen) (Melissa Kin & Fong) for the defendant.

Noorin Badaruddin J:

[1] Enclosures 10 and 12 are the applications filed by the defendant in the two originating summons ('OS') (encl 20 in OS-25 and encl 23 in OS-26) to set aside the orders of the High Court of Malaya dated 21 May 2021 and 15 July 2021 ('registration orders'), which allowed the registration of certain Singapore orders as judgments of the High Court of Malaya pursuant to s 4 of the Reciprocal Enforcement of Judgment Act 1958 ('the REJA').

FACTS

The parties

[2] The first plaintiff is a company incorporated in the British Virgin Islands. It is in the business of, inter alia, acting as the corporate trustee of private family trusts.

[3] The second plaintiff is a company incorporated in Singapore. It is a wholly-owned subsidiary of the first plaintiff. It is likewise in the business of, inter alia, acting as the corporate trustee of private family trusts. It also provides trust administrative assistance to the first plaintiff in relation to various trusts.

[4] The defendant is Mr Tan Boon Thien. He is the son of Mr Tan Kim Choo ('TKC'), who was the settlor of the trust ('trust') which forms the subject matter of the Singapore proceedings, vide Case No HC/S 471/2019 ('Singapore proceedings').

The trust

[5] On or about 21 October 2002, TKC and the first plaintiff entered into a deed constituting the Tan Kim Choo Family Scholarship Trust ('trust deed') where TKC is the settlor and the first plaintiff as the trustee.

[6] The trust was set up for two classes of beneficiaries, ie, the 'Primary Beneficiaries', consisting of TKC's grandchildren and the 'Secondary Beneficiaries', consisting of TKC's children. The trust is a discretionary trust, as set out at cl 5(a) of the trust deed.

[7] The proper law of the trust is the laws of the Cayman Islands. The forum for administration of the trust is the Cayman Islands. Pursuant to cl 24 of the trust deed, the trust is an irrevocable trust without any powers reserved to the settlor.

TKC's last will and testament and executor of TKC's estate

[8] TKC had passed on, on 29 August 2018.

[9] The validity of TKC's last will and testament dated 3 March 2016 ('2016 will'), which is alleged to have supersedes TKC's last will and testament dated 6 March 2008 ('2008 will'), is currently subject to challenge in Malaysia ('Malaysian proceedings').

[10] The main differences between the 2008 will and the 2016 will are as follows:

(a) under the 2008 will, the beneficiaries are TKC's three daughters. The executor of the 2008 will is TKC's family lawyer, one Mr Chew Phye Keat from Messrs Raja, Darryl & Loh; and

(b) under the 2016 will, the beneficiaries are the defendant and his wife. The executor of the 2016 will is the defendant.

[11] On or about 7 December 2018, an independent administrator *pendente lite* was appointed by the Kuala Lumpur High Court to oversee and manage TKC's estate pending resolution of the Malaysian proceedings.

The Singapore proceedings

[12] On 10 May 2019, the defendant filed a generally-endorsed writ of summons in Singapore vide Case No HC/S 471/2019 ('Singapore proceedings') against the plaintiffs, in which the defendant sought for the following reliefs:

(a) a declaration that the trust in respect of the settlement fund is terminated;

(b) further or in the alternative, the removal of the plaintiffs as trustees of the trust;

(c) jointly and severally against each of the plaintiffs;

(d) damages to be assessed;

(e) interest;

(f) costs on an indemnity basis; and

(g) such further and other relief as the High Court of Singapore deems fit. A

[13] The Singapore proceedings were commenced by the defendant in his personal capacity and as executor of TKC's estate.

B

[14] On 13 May 2019, the defendant filed a summons for injunction against the plaintiffs vide sub Case No HC/SUM 2427/2019 ('Singapore injunction application'). Among the prayers sought was a mandatory injunction compelling the plaintiffs to transfer a sum of RM6m from the trust to the defendant's bank account for the purposes of discharging the loan taken out to finance the construction of a building in Kuala Lumpur. C

[15] On 30 October 2019, the plaintiffs filed a summons for stay of proceedings (forum non conveniens) vide sub Case No HC/SUM 5432/2019 ('Singapore stay application') to stay all proceedings in Case No HC/S 471/2019, including the Singapore injunction application, on the basis that Singapore is not the proper forum for the resolution of the dispute between the parties. D

E

[16] On 28 August 2020, the High Court of Singapore allowed the plaintiffs' Singapore stay application on the following grounds:

(a) the trust deed had expressly provided for the exclusive jurisdiction of the Cayman courts;

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(b) Cayman law is the governing law of the trust; and

(c) by virtue of an order of the Cayman Court dated 16 October 2019, the Cayman Court had indicated its willingness to hear the disputes in the Singapore proceedings and the injunction application.

G

[17] The Singapore proceedings and the Singapore injunction application were consequently stayed and the following orders for costs and disbursements were made in respect of the Singapore stay application and the Singapore injunction application:

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(a) Singapore stay application, Singapore Order No HC/QRC 5137 dated 28 August 2020:

(i) all proceedings in this action be stayed;

(ii) the plaintiff is to pay the defendants *costs fixed at S$15,000 with disbursements to be agreed*, and if not, to be determined by the court; and I

(iii) liberty to apply by letter on the issue of disbursements to be paid by the plaintiff to the defendants.

(b) Singapore injunction application, Singapore Order No HC/QRC 5136/2020 dated 28 August 2020:

1. Pursuant to orders made in HC/SUM 5432/2019, this application is stayed.

2. The Plaintiff is to pay the Defendants *costs fixed at S$8,000 with disbursements to be agreed,* and if not, to be determined by the Court.

3. Liberty to apply by letter on the issue of disbursements to be paid by the Plaintiff to the Defendants.

[18] As the plaintiffs and defendant were not able to agree on the disbursements upon a further application by the plaintiffs, the High Court of Singapore ordered on 4 November 2020 as follows:

(a) Singapore stay application, Singapore Order No HC/QRC 6357/2020 dated 4 November 2020:

> The Plaintiff is to pay the Defendants reasonable disbursements for HC/SUM 5432/2019 fixed at *S$7,940.61 and US$40,975.50.*

(b) Singapore injunction application, Singapore Order No HC/QRC 6354/2020 dated 4 November 2020:

> The Plaintiff is to pay the Defendants reasonable disbursements for HC/SUM 2427/2019 fixed at *S$2,151.66 and US$22,627.*

(the Singapore orders shall be collectively referred to as the 'Singapore orders'.)

[19] On 25 November 2020, the plaintiffs' Singapore solicitors wrote to the defendants' Singapore solicitors, requesting that payment of costs and disbursements pursuant the Singapore orders be made by the defendant to the plaintiffs.

[20] The defendant's Singapore solicitors nor the defendant himself have not responded to the aforementioned letter. The payment pursuant to the Singapore orders has not been made by the defendant to the plaintiffs.

ENFORCEMENT OF THE SINGAPORE ORDERS IN MALAYSIA

[21] On 28 April 2021, the plaintiffs commenced proceedings in Malaysia to register and enforce part of the Singapore orders (ie, specifically for the costs and disbursements awarded by the High Court of Singapore under the Singapore orders only) as a judgment of the High Court of Malaya, pursuant to the REJA. The plaintiffs' applications were allowed and the Singapore orders were registered accordingly as judgments of the High Court of Malaya.

[22] On 13 August 2021, the defendant filed the present applications in both OS No 25 and OS No 26 to set aside the registration orders.

SUMMARY OF THE DEFENDANT'S CONTENTIONS

[23] The grounds relied by the defendant in the two applications are identical and are as follows:

(a) the High Court of Singapore had taken into account and/or gave consideration to matters which it did not have the jurisdiction to decide;

(b) the defendant's capacity as executor of TKC's estate is pending/awaiting trial and/or the decision of the High Court of Malaya at Kuala Lumpur, and as a result, the plaintiffs' application is premature;

(c) if the Singapore orders are registered in Malaysia, the defendant's rights will be prejudiced if the High Court of Malaya at Kuala Lumpur decides that the defendant is not an executor recognised under the laws of Malaysia; and

(d) that if the Singapore orders are registered in Malaysia, it will be contrary to public policy since:

(i) the Singapore orders are merely interim or interlocutory orders;

(ii) the defendant's right to raise a defence of setoff is limited as his capacity as executor of TKC's estate is being challenged in the Malaysian proceedings; and

(iii) the High Court of Singapore has not rejected the defendant's claim against the plaintiffs which depends on the decisions of the High Court of Malaya in the Malaysian proceedings.

SUMMARY OF THE PLAINTIFFS' CONTENTIONS

[24] In seeking for the present applications to be set aside, the plaintiffs in summary submit the followings:

(a) the relevant portions under the Singapore orders had been registered as a judgment of the High Court of Malaya. Notably, the registered portions of the Singapore orders are only in respect of the costs and disbursements awarded to the plaintiffs arising from the Singapore proceedings;

(b) the plaintiffs have met all requirements stipulated under ss 3 and 4 of the REJA to register the Singapore orders as a judgment of the High Court of Malaya. The costs and disbursements awarded under the Singapore orders are final and enforceable in Singapore;

(c) the grounds for setting aside the registration of a foreign judgment are

limited to the circumstances set out under s 5(1) of the REJA. The defendant has failed to demonstrate that his case falls within the ambit of s 5(1) of the REJA and

(d) the defendant has not shown that the registration and enforcement of the Singapore orders as a judgment of the High Court of Malaya will be contrary to the public policy of Malaysia.

FINDINGS

[25] Sections 3 and 4 of REJA set out the requirements for a foreign judgment or order to be registered as a judgment of the High Court of Malaya. Sections 3 and 4 which come under Part II of the REJA are reproduced:

Part II

3 Registration of judgments from reciprocating countries

(1) This Part shall extend to *judgments given in the superior courts of reciprocating countries.*

...

(3) Any judgment of a superior court, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if —

(a) *it is final and conclusive as between parties thereto;*

(b) *there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty*; and

(c) *being a judgment from a country or territory added to the First Schedule pursuant to subsection (2), it is given after that country or territory is added to that Schedule.*

(4) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

...

4 Application for an effect of registration of judgment

(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that *a judgment shall not be registered* if at the date of the application —

(a) *it has been wholly satisfied*; or

(b) *it could not be enforced by execution in the country of the original court.*

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

[26] The plaintiffs are seeking to enforce part of the Singapore orders pursuant to s 4(5) of the REJA. The Singapore orders are valid and enforceable by way of execution in Singapore. As this relates to an application of foreign law, ie, Singapore law, this is a question of fact and an expert opinion is relevant under s 45(1) read together with s 51 of the Evidence Act 1950. The plaintiffs' position is supported by the plaintiffs' expert's opinion on Singapore law stating that:

(a) a judgment or order of the High Court of Singapore takes effect from the day it is dated (ie, 28 August 2020 and 4 November 2020 for the Singapore orders dated 28 August 2020 and 4 November 2020 respectively);

(b) pursuant to O 57 r 4 of the Singapore Rules of Court (in force at the relevant time), the defendant had one month from the date of the Singapore orders to appeal against the said orders; and

(c) further pursuant to s 34, read with the Fifth Schedule of the Singapore Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (in force at the relevant time), leave of court to appeal is required if the only issue in the appeal relates to costs. An application for leave to appeal against the Singapore orders must be filed within seven days from the date of the order (O 56 r 3(1) of the Singapore Rules of Court, in force at the relevant time).

[27] The defendant does not proffer any expert evidence to contradict the plaintiffs' position.

[28] It cannot be disputed that to date, there is no appeal filed by the defendant against the Singapore orders and no application for leave to appeal has been filed in respect of the same. The time for filing the appeal has long expired. Further, s 41 of the Singapore Supreme Court of Judicature Act (in force at the relevant time) also provides that an appeal does not act as a stay of execution. The defendant has not made an application for a stay of execution, nor has any such order been granted by the Singapore courts to the defendant. Therefore the order for costs in the Singapore orders are final and conclusive. The defendant has no right to revisit the costs and disbursements granted by the Singapore High Court before this court.

[29] The High Court of Singapore is a superior court of a reciprocating country, as set out in the First Schedule of the REJA. The Singapore orders are final and conclusive between the parties. There is a sum of money payable under the Singapore orders, ie, the award of costs and disbursements by the High Court of Singapore in respect of the Singapore proceedings and the injunction application and the defendant has yet to satisfy the award of costs and disbursements under the Singapore orders. Therefore, the plaintiffs have met all the requirement under ss 3 and 4 of the REJA to register the Singapore orders as a judgment of this court and the registration orders are in order.

[30] The grounds for setting aside a registered judgment are limited to those set out under s 5(1) of the REJA. Section 5(1) of the REJA states:

> 5 Cases in which registered judgments must, or may, be set aside
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> (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment —
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> (a) shall be set aside if the registering court is satisfied —
>
> (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;
>
> (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
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> (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
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> (iv) that the judgment was obtained by fraud;
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> (v) that the enforcement of the judgment would be contrary to public policy in Malaysia; or
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> (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made.

[31] In the case of *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* [2019] 8 MLJ 186, the High Court in citing the case of *Malayan Banking Berhad v Ng Man Heng* [2005] 1 MLJ 470 held as follows:

> [8] Section 5(1) of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA') provides as follows:
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> ...
>
> Thus in *Malayan Banking Berhad v Ng Man Heng* [2005] 1 MLJ 470 it was stated at pp 491–492 as follows:
>
> [60] The grounds on which the registration of a foreign judgment is disallowed

are clearly spelt out in s 5(1) of the Reciprocal Enforcement of Judgments Act 1958; ...

...

[64] In application for registration of foreign judgment the court must be slow to refuse registration on tenuous grounds as it will lead to our judgments not being accorded reciprocity by the courts of reciprocating countries. This is the rationale behind s 5(1) of the REJA, which limits and specifies the grounds on which registration can be challenged. *If we begin to widen the scope set out by Parliament in s 5(1) of the REJA, which is the very same scope in the legislation of reciprocating countries such as Singapore, then we can expect refusal to register our judgments in foreign courts on tenuous grounds.* Even the public policy limb must be interpreted restrictively because it is 'a very unruly horse, and once you get astride it you never know where it will carry you. It may lead you from the sound law' (per Burrough J in *Richardson v Melish* [1824] 2 Bing 229, quoted with approval by Eusoff Chin J (as His Lordship then was) in The *Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484) *In the interest of comity of nations, the registration of a foreign judgment should not be refused on grounds not provided in s 5(1) of the REJA.*

[9] *This essentially means that the grounds for setting aside are limited to that as spelt out in s 5(1)(a).* What JD has to do in this particular instance is to show the grounds as circumscribed exist.

[32] The High Court's decision was subsequently affirmed by the Court of Appeal in the same case (see: *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* [2019] MLJU 101), where at para 55, the court stated:

[55] ... As recognised by the learned Judge, following an earlier decision in *Malayan Banking Berhad v Ng Man Heng* [2005] 1 MLJ 470, *the registration of a foreign judgment should not be set aside on grounds outside s 5 of the Act.* (Emphasis added.)

[33] The defendant relies on among others, the following grounds to set aside the registration orders:

(a) the High Court of Singapore had taken into account and/or gave consideration to matters which it does not have the jurisdiction to decide;

(b) the defendant's capacity as executor of TKC's estate is pending/awaiting trial and/or the decision of the High Court of Malaya at Kuala Lumpur, and as a result, the plaintiffs' application is premature; and

(c) if the Singapore orders are registered in Malaysia, the defendant's rights will be prejudiced if the High Court of Malaya at Kuala Lumpur decides that the defendant is not an executor recognised under the laws of Malaysia.

[34] On the first ground, this court finds that the defendant's assertion goes to the merit of the case and any challenge as to the merit of the case must necessarily be taken up before the High Court of Singapore (see: *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* [2019] MLJU 101). Before this court, it is the registration that is challenged and not the merits or propriety of the judgment. If indeed the defendant is dissatisfied with the Singapore orders, the defendant ought to have appealed against and/or applied to set aside the Singapore orders in court of original jurisdiction which is the Singapore courts. The Malaysian courts do not sit as an appellate courts to rehear the dispute or to examine foreign judgment for any errors (see: *PT Sandipala Arthaputra v Muehlbauer Technologies Sdn Bhd* [2021] MLJU 1063). As such, the first ground raised by the defendant does not fall within the confine of s 5(1) of the REJA.

[35] The defendant's assertions that the registration of the Singapore orders in Malaysia is premature and will cause prejudice to the defendant are erroneous and misconceived on the facts and the law. In any event, this ground too do not fall within s 5(1) of the REJA.

[36] According to the defendant, if the High Court of Malaya finds that the defendant is a valid executor of TKC's estate the Singapore proceedings which has been stayed may be continued by the defendant against the plaintiffs and the defendant is therefore a beneficiary to the trust and entitled to set off the costs against the defendant in the Singapore proceedings. The defendant further contends that if the High Court of Malaya finds that he is not a valid executor of TKC's estate, then the costs and disbursements awarded by the High Court of Singapore ought to be enforced against TKC's estate or the valid/actual executor of TKC's estate.

[37] It must be borne in mind that the court do not act upon hypothesis or conjecture. The defendant's reliance on conjecture and hypothesis to support his application under s 5(1) of the REJA is untenable.

[38] The plaintiffs have highlighted to this court that the Singapore proceedings have not been stayed 'pending the decision of the Probate Challenge Suit in Kuala Lumpur' but on grounds that there was an exclusive jurisdiction clause in favour of the Cayman court and the defendant had failed to show strong cause to derogate from the jurisdiction clause. The High Court of Singapore was also of the view that even if exclusive jurisdiction was not conferred on the Cayman courts, it was satisfied that the stay should be granted as the Cayman Islands is the more appropriate forum to resolve the dispute, and no prejudice would be caused or juridical advantage lost. Under the laws of Singapore, a stay of proceedings on grounds of forum non conveniens is suspensory in nature and may only be lifted in exceptional circumstances where

the premise on which the stay was granted turns out to have been mistaken. In this regard the plaintiffs refer to and adopt the opinion of the plaintiffs' expert on Singapore law.

[39] The plaintiffs' expert had relied on the Singapore case of *Rotary Engineering Ltd and Others v Kioumji & Eslim Law Firm and Another and Another Appeal* [2017] 1 SLR 907 in arriving at his opinion, where the Singapore Court of Appeal held as follows:

> [24] If the defendant succeeds in a plea of forum non conveniens, the consequence is that the action brought here is stayed. A stay is suspensory only, and is conceptually distinct from a dismissal or discontinuance. Consequently, the court granting a stay remains seised of the proceedings and may in principle lift the stay at a later date. *Rofa Sport Management AG v DHL International (UK) Ltd* [1989] 1 WLR 902 at 911. That decision was more recently confirmed in *The Alexandros T* [2013] ILSC 70 at [81]–[83], and we see good practical as well as doctrinal reasons to adopt the same position in Singapore. *Thus, in the exceptional circumstance where a premise on which the stay was granted turns out to have been mistaken, the court may be persuaded to exercise its discretion to lift the stay. An example will illustrate the point: the court might assume that another jurisdiction is available, but it might later turn out that that other jurisdiction is not willing to take jurisdiction for some reason. In such a case, it would be open to the plaintiff to come back and seek the lifting of the stay.* (Emphasis added.)

[40] Since the stay ordered by the High Court of Singapore was not premised on the capacity in which the defendant was acting or purporting to act, even if the defendant's appointment as executor of TKC's estate is confirmed by the High Court of Malaya, this would not constitute an exceptional circumstance where the Singapore proceedings was stayed on a mistaken premise. In other words, a decision on whether the defendant was validly appointed as executor of TKC's estate, is an irrelevant consideration in determining whether the stay of the Singapore proceedings will be lifted by the Singapore courts.

[41] Pertinently, the plaintiffs' are only seeking to enforce the orders for costs and disbursements following the stay of the Singapore proceedings. Even on an assumption that the stay of the Singapore proceedings is shown by subsequent events to have been made on a mistaken premise, the stay would be considered to have been rightly granted at the material time. Under such circumstance, the court in deciding the setting aside of the stay will likely order separate costs for the application to lift the stay, and would leave the orders for costs and disbursements made in the stay application untouched.

[42] This court agrees with the plaintiffs that given the above, it is clear that the defendant has no valid grounds to set aside the stay of the Singapore proceedings and cannot be said to suffer any prejudice if the Singapore orders are enforced against the defendant in Malaysia. If at all the defendant would

A want to claim from the estate, this will be a separate cause of action altogether. This court will not dwell further on the defendant's hypothesis and conjecture. The Singapore orders are not complex orders to be further considered and scrutinized by this court. It is just orders for costs and disbursements for actions initiated by the defendant with full knowledge at the material time that his B capacity as administrator was being challenged in the Malaysian court. It is untenable for the defendant to now rely on the challenge to his capacity in the Malaysian courts and the appointment of the interim liquidator to say that it is now uncertain whether he is the executor and therefore he is not liable for costs. Clearly, in the Singapore court he was acting as the executor and not only that, C he was also acting in his personal capacity. The Singapore orders for costs and disbursements were made against him in both capacity and as such would be enforceable against him in either capacity, jointly and severally.

D **[43]** The defendant also seeks to set aside the registration of the Singapore orders on grounds that the registration and enforcement of such orders in Malaysia would be contrary to the public policy of Malaysia. The issue of public policy was dealt with by the Malaysian High Court in the case of *PT Sandipala Arthaputra v Muehlbauer Technologies Sdn Bhd* [2021] MLJU 1063 as follows:

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> [55] *The public policy consideration in respect of recognition of a foreign judgment under the common law rule is mainly centred on the nature of the judgment. 'Judgment based on laws which are objectively disgraceful, or on laws which produce an outcome which is equally repellent, for example, will be denied recognition* (see Adrian Briggs, *The Conflict of Laws*, p 147).

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> [56] In Malaysia, the Federal Court in *Jan De Nul (M) Sdn Bhd & Anor v Vincent Tan Chee Yioun &Anor* [2019] 2 MLJ 413; [2019] 1 CLJ 1, cited the Court of Appeal decision in *Sigur Ros Sdn Bhd v Master Mulia Sdn Bhd* [2018] 3 MLJ 608; [2018] 8 CLJ 291, with approval and stated as follows:

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> > ... As clearly stated by the Court of Appeal in *Sigur Ros* (with which we agree): *'The concept of public policy must be one taken in the higher sense where some fundamental principle of law or justice is engaged, some element of illegality, where enforcement of the award involves clear injury to public good or the integrity of the court's process or powers will be abused'.*

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> [57] In both the decisions, the superior courts were making reference to an arbitration award and its proceedings, particularly in reference to the interpretation of the term 'public policy' in the Arbitration Act 2005. *What could be deduced from the higher courts' reasoning of 'public policy' is that it 'signifies some matter which concerns public good and public interest'.*

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> [58] *A decision obtained by means of fraud or corruption is clearly against the public good and public interest (see s 37(2)(a) of the Arbitration Act 2005). And, borrowing from the words of Adrian Briggs, 'judgment [referring to foreign judgment] based on laws which are objectively disgraceful, or on laws which produce an outcome which is equally repellent', surely they are against the public good and public interest in Malaysia. 'Public good' or 'public interest' is synonymous to the public weal.*

[59] All of the complaints raised by the defendant's counsel could not been said to harm the public good or public interest. The mere fact that the Indonesia courts dismissed the jurisdictional challenge could not by itself be contrary to our Malaysian public policy. The defendant was given every opportunity at every level to challenge the jurisdiction of the Indonesia court. The complaint that the damages were not particularised, not proven, were punitive and causation was not established, all go to the evidence and merits of the decision of the foreign court, and such complaint does not go to prove the foreign court proceeding was contrary to public policy of Malaysia. The same applies to the third and fourth complaints.

[60] *This head of defence of foreign court proceeding being contrary to public policy to oppose the recognition of foreign judgment should not be treated as an 'all-encompassing' defence.* The defendant's complaints levelled against the foreign courts and their judgments could not be said to have establish that the foreign court proceedings or the foreign judgment were against the public policy in Malaysia.

[61] This court has to refrain from probing into the merits of the claim tried and decided by the foreign court. This court in exercising its judicial discretion has to be guided by the common law rule principles in recognising a foreign judgment. *As such, a complaint under this head has to be so blatantly clear that it would 'shock the conscience' of this court, or that the complaint is so 'clearly injurious to the public good, or wholly offensive to the ordinary reasonable and fully informed member of the public'.* Unfortunately, *this court could not see this element in any of these in the defendant's complaints. This court also could not find the foreign judgment was based on laws which are objectively disgraceful, neither has it produced an outcome which is equally repellent.*

[62] *The defendant's complaints were disguised grounds of appeal against the decision of the foreign court. This court or the Malaysian courts is not an appellate court to rehear the dispute or scrutinize the foreign judgment for errors.* (Emphasis added.)

[44] In *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* the Court of Appeal had held that the concept of public policy is a narrow and restrictive doctrine. The public policy consideration in respect of recognition of a foreign judgment must be centred on the nature of the judgment, ie, where the judgment is based on laws which are objectively disgraceful, or on laws which produce an outcome which is equally repellent. In this respect, the defendant has not made any assertions on any of those grounds in regards to the Singapore orders.

[45] The non-recognition of the Singapore orders would violate the principle of international comity and substantial reciprocity as statutorily provided under REJA. The orders for costs and disbursements are final and may be enforced against the defendant by way of execution in Singapore and therefore, in Malaysia as provided under REJA.

[46] The defendant has failed to demonstrate any concrete relationship between the Malaysian and Singapore proceedings, and how the enforcement of a final and conclusive judgement in respect of the costs and disbursements granted by the High Court of Singapore against him would be contrary to any

public good and/or public interest. The defendant's reliance on public policy as a ground to set aside the registration of the Singapore orders is erroneous and cannot be sustained.

CONCLUSION

[47] There are no merits to the defendant's applications. The grounds relied upon by the defendant to support his applications do not constitute valid grounds under s 5(1) of the REJA and/or are misconceived.

[48] In the circumstances, encls 10 and 12 were dismissed with costs.

Both OS dismissed.

Reported by Ashok Kumar